

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
SARAH J. HEFFLEY, JUDGE

DIVISION II

CA 06-1047

May 16, 2007

CORBETT GARRETT TRUCKING,  
INC.

APPELLANT

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION  
[NO. F403031]

V.

JERRY BARTON

APPELLEE

AFFIRMED

Appellant, Corbett Garrett Trucking, Inc., appeals the award of workers' compensation benefits to its employee, appellee Jerry Barton. Appellant argues that (1) the decision of the Workers' Compensation Commission (Commission) is not supported by substantial evidence, and (2) the Commission arbitrarily disregarded objective medical evidence that appellee's condition was degenerative in nature and not the result of a specific compensable incident. We find no error and affirm.

This case arose from an injury sustained by appellee on April 28, 2002, while employed by appellant as a truck driver. Appellee claimed that he injured his back while working on the air conditioner of his truck. Specifically, appellee stated that he slipped and

fell off the engine, hitting his low back on a tire and injuring his lower back and right hip. Some of appellee's medical bills were paid by Transpec, appellant's insurance provider, but appellant later controverted the injury in its entirety. Appellant argued that appellee did not sustain a compensable injury on the date in question, and any alleged injury was not supported by objective medical findings. A hearing was held before the Administrative Law Judge (ALJ) on August 23, 2005, to determine the compensability of the injury.

At the hearing, appellee testified that he was on his way to Tuscon, Arizona when he stopped at a rest stop in Big Springs, Texas. Appellee testified that the air conditioner had quit and when he got out of the truck to work on it, he slipped and hit his back on the tire. He testified that he contacted his employer that day or the next day and told him that he had been injured. Appellee stated that he proceeded on his trip to Tuscon, and although his back pain worsened, he thought he was okay. However, appellee stopped on his way back to Arkansas in Anthony, Texas, called his employer, and told his employer he "was paralyzed in [his] legs." His employer then had another employee fly to appellee's location and drive the truck back while appellee rode in the sleeper compartment.

Appellee testified that after returning home to Heber Springs, Arkansas, he told his employer that he had sprained his back one time before, but the pain he felt this time was twice as bad. Appellee stated that his employer told him to go to the doctor, and appellee did visit a physician, Dr. Eugene Joseph, on May 3, 2002. At that visit, appellee described his injury as "fell off engine, grabbed bar, slipped around hitting low back on tire. Pain in low back, right hip." Dr. Joseph diagnosed appellee with back pain and radiculopathy and

noted that the injury was work-related. Appellee testified that he continued to see Dr. Joseph for a while, then had testing and ultimately began seeing Dr. Patrick Chan for steroid injections.

Appellee testified that he had not had any serious injuries other than spraining his back several years earlier, but on cross-examination, appellee admitted that he had at least one prior workers' compensation claim related to his back. Appellee also admitted that he underwent a pre-employment physical before starting work for appellant, and in the report of that physical it was noted that appellee has "tender lumbar spine with occasional radiation of pain and numbness in legs." Appellant also introduced medical documents during cross-examination, dated May 9, 2002, through August 22, 2002, in which Dr. Joseph noted he was treating appellee for "degenerative disc disease." Appellee was also questioned by the ALJ and testified that he underwent surgery in August 2004 to fuse the L5 and S1 discs in his spine.

Corbett Garrett, the owner of appellant company, also testified at the hearing. Garrett verified that appellee had contacted him in April 2002 and stated that he had an accident. Garrett testified that after appellee returned to Arkansas, he showed Garrett the bruising on his back, and Garrett said "he had been bruised up pretty bad." However, Garrett testified that he had seen other injuries of this nature before, and in his opinion, appellee's injury looked like the result of a beating and not the result of falling off a truck. Garrett also testified that the insurance provided by his company, Transpec, was supposed to take the place of workers' compensation insurance, and as far as he was concerned,

Transpec was supposed to pay all of appellee's bills.

The ALJ issued an opinion on November 21, 2005, finding that appellee had established by a preponderance of the evidence that he sustained a compensable injury identifiable by time and place of occurrence. The ALJ noted that he did not find either appellee or Garrett particularly credible, but after considering the testimony offered and the documentary evidence, the preponderance of the credible evidence established that appellee "did in fact slip and fall, striking his back on a truck tire, as he asserts, rather than sustaining his back injury in some type of fight as Mr. Garrett asserts."

To support his conclusion, the ALJ noted that Transpec had initially paid appellee's bills, and initially Garrett had not raised any suspicion that appellee's injury was not work-related. He also noted the May 3, 2002, report from Dr. Joseph, which contains a history explaining that appellee hit his back on a tire on an eighteen-wheeler and indicates there is no question on the part of the physician that the injury was work-related. The ALJ therefore concluded that appellee's testimony was supported by the medical evidence, and he had established a compensable injury.

The ALJ also specifically found that the medical evidence establishing the back injury was supported by objective findings. He specifically noted the bilateral paraspinous muscle spasms observed by Dr. Bob Smith, who performed a steroid injection on appellee on May 13, 2002, and the L5-S1 disc abnormality noted on MRIs performed on August 27, 2002, and April 8, 2004. Though the May 7, 2002, MRI report did not indicate disc protrusions or an impingement on the thecal sac, the ALJ noted that appellee reported back pain with

radiculopathy on his first visit to Dr. Joseph on May 3, 2002, which was before the first MRI on May 7, 2002; the radiating pain was similarly noted on May 13, 2002, and also persisted in 2003 and 2004, requiring a series of steroid injections and ultimately surgery. Appellant appealed to the Commission, and the Commission adopted and affirmed the ALJ's opinion, with one Commissioner dissenting. Appellant then filed a timely appeal with this court.

In determining the sufficiency of the evidence to support the findings of the Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings, and we will affirm if those findings are supported by substantial evidence. *Farmers Coop. v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* It is the function of the Commission to determine the credibility of witnesses and the weight to be given their testimony. *Searcy Indus. Laundry v. Ferren*, 82 Ark. App. 69, 110 S.W.3d 306 (2003). Furthermore, the Commission has the duty of weighing medical evidence and, if the evidence is conflicting, its resolution is a question of fact for the Commission. *Id.* The issue is not whether this court might have reached a different result from that reached by the Commission, or whether the evidence would have supported a contrary finding. *Smith v. County Market/Southeast Foods*, 73 Ark. App. 333, 44 S.W.3d 737 (2001). We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *Id.*

Appellant first argues on appeal that the Commission's decision was not supported by substantial evidence. Appellant asserts that appellee presented no witnesses or evidence, other than his own testimony, to show that the incident that caused the injury actually occurred. Appellant's argument is basically an assertion that appellee was not a credible witness. Although the ALJ's opinion agreed with appellant that appellee was "not particularly credible," he did not find that appellant was utterly lacking in credibility, and he based his findings on what he termed the *credible* evidence, i.e., the totality of the testimony presented *and* the medical documents. Therefore, appellant's argument concerning the unreliability of appellee's testimony as a basis for reversal is unavailing.

Appellant also argues that there was no objective evidence of a specific injury suffered by appellee, and the Commission arbitrarily disregarded objective medical evidence showing that appellee's condition was simply degenerative disc disease. Under Arkansas Code Annotated section 11-9-102(4)(D) (Supp. 2005), a compensable injury must be established by medical evidence supported by objective findings, and objective findings are "those findings which cannot come under the voluntary control of the patient." Ark. Code Ann. § 11-9-102(16). Appellant relies heavily on the first MRI performed after the incident, which showed no disc protrusions or impingement upon the thecal sac but did report that appellee had degenerative disc disease, as well as the doctor's notes that describe appellee's condition as "degenerative disc disease." Appellant argues that this evidence showed there had been no trauma-related change to appellee's back since his pre-employment physical, all the medical treatment appellee did receive was for degenerative disc disease, and appellee

failed to introduce medical evidence to prove a causal relationship between his symptoms and the alleged injury. However, our case law has established that objective medical evidence is not essential to establish the causal relationship between the injury and a work-related incident when objective medical evidence establishes the injury's existence, and a preponderance of other non-medical evidence establishes a causal relation to a work-related incident. *Liaromatis v. Baxter Co. Regional Hosp.*, 95 Ark. App. 296, \_\_\_ S.W.3d \_\_\_ (2006). In this case, the ALJ found that there was objective evidence, in the form of bilateral paraspinous muscle spasms and MRIs, to establish the injury's existence, and the testimony and medical documents establish a causal relation to a work-related incident. Therefore, appellee was not required to present objective medical evidence of the causal relationship.

Appellant also contends that the ALJ "speculated that, since Claimant was reporting symptoms, and since he had a disc herniation four months later, the MRI which was performed approximately ten days after the incident must have been faulty or misread." However, this is a mischaracterization of the ALJ's assessment of the evidence. The ALJ did not claim that the MRI was faulty or misread; instead, after reviewing the totality of the medical evidence, the ALJ concluded that the disc herniation had not been detected on the first MRI. This is consistent with the MRI report dated August 27, 2002, which noted that the disc herniation had not been "evident" at the time of the first MRI on May 7, 2002.

While it is true that the Commission may not arbitrarily disregard medical evidence, it is within the province of the Commission to weigh conflicting evidence, use its expertise to determine the soundness of medical evidence, and translate it into findings of fact.

*Hamilton v. Gregory Trucking*, 90 Ark. App. 248, 205 S.W.3d 181 (2005). And, on appeal, the issue is not whether this court might have reached a different result, but rather whether fair-minded persons could have reached the same result as the Commission. *Smith, supra*. We cannot say that fair-minded persons with the same facts before them could not have reached the conclusion arrived at by the Commission. Accordingly, we affirm.

Affirmed.

MARSHALL and VAUGHT, JJ., agree.